

REMARKS

Applicant would like to thank the Examiner, Richard Seidel, for the interview which occurred on September 6, 2001 between Applicants' representative, Kristi L. Davidson, and the Examiner. The Examiner has rejected claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Ham et al. U.S. Patent No. 5,456,667 in view of Reger et al U.S. Patent No. 5,211,651. Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,885,258, which rejection may be overcome by the filing of a terminal disclaimer.

Claim 1 has been amended to clarify that the slotted retrieval basket section is capable of expansion and contraction to surroundingly contact, capture and retrieve at least one particle. This function of the claimed medical instrument is shown in FIGS. 1A-1D and the corresponding description at page 6, line 15 to page 7, line 5 of the instant application. The slotted basket contracts either upon heating or upon relative axial movement between the delivery tube and memory metal tube until the particle is surrounded by the slotted section and caught therein. The captured particle may then be removed or retrieved by withdrawing the device from the patient's body.

With respect to Ham et al., the catheter assembly (10) includes an expandable region (12), referred to by the Examiner as a slotted section. This slotted section (12) is expanded to hold open the artery. As the Examiner states in the Office Action on page 3, "Ham fails to disclose the slotted section capturing and retrieving particles." In fact, the structure disclosed in Ham et al. is not capable of surroundingly contacting, capturing and retrieving a particle. The structure includes a catheter body (11) in which the expandable region is formed

between the proximal and distal ends (14) and (15). Distal end (15) is bonded to distal collar (31), to which control wire (13) is also affixed. Control wire (13) extends through the interior of expandable region (12), and operates to expand and contract region (12). Also extending through the interior of expandable region (12) are tubular element (29) and core member (32). Due to these elements extending within the interior of the expandable region (12), the slotted section is not capable of surroundingly contacting a particle within the interior. Furthermore, the structure cannot be modified to eliminate these interior elements without rendering the device unsuitable for its intended purpose.

Likewise, Reger et al. discloses a structure that includes elements within the interior of the basket knife (32) that would render the slotted section or blades (34) incapable of surroundingly contacting, capturing and retrieving a particle. In fact, Reger et al. propose to capture particles either by: (1) the balloon catheter (60) after the knife is removed, (2) a latex membrane skirt (92) surrounding the basket assembly at locations other than where the cutting blades are located, or (3) a removable stocking filter supported by the blades. These other means for capturing particles are evidence that Reger et al. did not intend for the blades to perform the particle removal function.

In conclusion, neither the Ham et al. reference nor the Reger et al. reference disclose the claimed invention of a slotted retrieval basket section capable of expansion and contraction to surroundingly contact, capture and retrieve at least one particle. Each cited reference contains elements that pass through the interior of the slotted portion that would render that slotted portion incapable of surroundingly contacting at least one particle. Thus, there is no teaching, suggestion or motivation within the references or the knowledge of one of ordinary

skill in the art at the time of the invention to modify the catheter assembly of Ham et al. to arrive at the claimed invention, as amended herein. Applicants thus respectfully request that the rejection of claim 1 under § 103 be withdrawn.

With respect to claim 7, a terminal disclaimer is filed herewith, thereby overcoming the rejection under the judicially created doctrine of obviousness-type double patenting over commonly owned U.S. Patent No. 5,885,258.

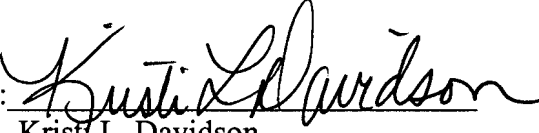
Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version with Markings to Show Changes Made." Also attached hereto is a clean copy of all claims now pending in this application.

In view of the foregoing amendments to the claims and remarks given herein, applicants respectfully believe this case is in condition for allowance and respectfully request allowance of the pending claims. If the Examiner believes any detailed language of the claims requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. The Examiner's prompt attention to this matter is appreciated.

Applicants are of the opinion that an additional fee of \$55.00 is due as a result of the filing of a terminal disclaimer, and a fee of \$460.00 is due for the three-month extension of time. A check in the amount of \$515.00 is enclosed. If any charges or credits are necessary to complete this communication, please apply them to deposit account no. 23-3000.

Respectfully submitted,

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